

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
GREENVILLE DIVISION**

**CASE NO. 6:15-mn-02613-BHH**

**IN RE: TD BANK, N.A. DEBIT CARD  
OVERDRAFT FEE LITIGATION**

**MDL No. 2613**

This filing relates to:

*Dorsey v. TD Bank, N.A.*  
D.N.J. Case No. 1:17-cv-00074  
D.S.C. Case No. 6:17-cv-01432

**PLAINTIFF'S RESPONSE TO DEFENDANT TD BANK N.A.'S  
NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiff Shaina Dorsey's ("Plaintiff Dorsey") hereby responds to Defendant TD Bank, N.A.'s ("TD Bank") Notice of Supplemental Authority (ECF No. 27) pertaining to the pending Motion to Dismiss (ECF No. 15).

The Order in favor of MB Financial Bank, N.A. dismissing a National Bank Act usury claim does not aid this Court in evaluating the arguments raised in TD Bank's pending Motion to Dismiss in this action. *Moore v. MB Fin. Bank, N.A.*, No. 17 C 4716, 2017 WL 5619438 (N.D. Ill. Nov. 16, 2017), simply reflects a summary decision to join other courts, including this Court's Order on the Consolidated Amended Complaint filed by the MDL Plaintiffs, in concluding that continuous or sustained overdraft fees are non-interest charges under the National Bank Act. Plaintiff Dorsey's arguments in opposition to the Motion to Dismiss demonstrate why it is error to rely on the fact that Sustained Fees are flat fees charged on deposit accounts, as opposed to a credit transaction, as the *Moore* court did.

The *Moore* court does not explain why it rejected the well-reasoned decision to deny a motion to dismiss in *Farrell v. Bank of America, N.A.*, 224 F. Supp. 3d 1016 (S.D. Cal. 2016),<sup>1</sup> or why Plaintiff Dorsey's additional arguments in favor of denying TD Bank's pending Motion to Dismiss are not well-taken.

Dated this 30th day of November, 2017.

/s/ E. Adam Webb

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***Counsel for Plaintiff Shaina Dorsey***

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<sup>1</sup> Bank of America, N.A. has agreed to settle *Farrell*, for \$66.6 million in monetary relief and ceasing its practice of charging continuous overdraft fees for a period of 5 years, which will save its customers approximately \$1.2 billion. The settlement is pending preliminary and final class settlement approval.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 30th day of November, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will cause a true and correct copy to be served via e-mail on all ECF-registered counsel of record.

/s/ E. Adam Webb  
E. Adam Webb